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Paper No. 9

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In re Application of
Herle et al.
Application No. 10/035,800
Filed: December 28, 2001
Attorney Docket No. SAMS01-00185

: DECISION WITHDRAWING
: HOLDING OF ABANDONMENT
: AND
: ACCORDING STATUS UNDER
: 37 CFR 1.47(a)

This decision concerns the May 1, 2003 "Request for Withdrawal of Holding of Abandonment" which is being properly treated as a petition under 37 CFR 1.181; and a renewed petition under 37 CFR 1.47(a) which was apparently mailed on October 17, 2002 but never received by the PTO.

The petition under 37 CFR 1.181 is **GRANTED**.
The renewed petition under 37 CFR 1.47(a) is **GRANTED**.

Two inventors are named in this application. The April 6, 2002 petition under 37 CFR 1.47(a) was dismissed on August 6, 2002 ("8/6/02 Decision") for failing to show that a *bona fide* attempt had been made to present to the non-signing inventor, Mark Mitchell ("Mitchell"), for review, a copy of the entire application (specification including claims; drawings) prior to concluding that Mitchell refused to join in this application. The 8/6/02 Decision set forth an extendable 2-month period for filing a renewed §1.47(a) petition. No extension of time under 37 CFR 1.136(a) was obtained, and no response (either a fully executed oath/declaration, or, a renewed §1.47(a) petition) was filed. The application was considered abandoned as of October 7, 2002.

Petition under 37 CFR 1.181

The petition asserts that a renewed §1.47(a) petition was mailed on October 17, 2002. In support, the petition is accompanied by copies of a "Renewed Petition under 37 CFR 1.47(a)" and a transmittal letter bearing an "October 17, 2002" Certificate of Mailing, both allegedly deposited in the U.S. Postal Service on October 17, 2002 as first class mail.

Correspondence required to be filed in the PTO within a set period of time will be considered as being timely filed if it is deposited as first class mail with the U.S. Postal Service in accordance with the procedure set forth in 37 CFR 1.8(a). In the instant case, however, the allegedly mailed renewed §1.47(a) petition has not been received by the PTO. In order to have this renewed §1.47(a) petition considered timely filed as alleged, i.e., filed on the Certificate of Mailing date of October 17, 2002, 37 CFR 1.8(b) requires Applicants to:

- (1) inform the PTO of such mailing promptly after becoming aware of the PTO's non-receipt of the mailed petition;¹

¹ This condition is met.

- (2) supply an additional copy of the previously mailed petition;² and
- (3) provide a statement attesting on a personal knowledge basis . . . to the previous timely mailing of the petition.³

The petition meets the above requirements under 37 CFR 1.8(b). The Office thus concludes that a renewed §1.47(a) petition was mailed on October 17, 2002 but either never reached the PTO or was lost after receipt in the PTO. Therefore, the holding of abandonment in this application is hereby withdrawn. No petition fee is owed.

Renewed §1.47(a) petition

The exhibits enclosed with the petition indicate that a copy of the entire application was hand-delivered to Mitchell on November 26, 2001 (first draft: specification including claims; drawings) and again on December 27, 2001 (final draft: specification including claims; drawings); and that Mitchell expressly refused to sign the application declaration. The renewed §1.47(a) petition is thus granted. No petition fee is owed.

As authorized, the \$110 fee for a 1-month extension-of-time for filing the October 17, 2002 renewed §1.47(a) petition has been charged to Deposit Account No. 50-0208.⁴

As provided in 37 CFR 1.47(c), the Office will forward notice of the filing of this application to Mitchell at his last known address provided in the petition:

8623 Glencrest
Dallas, TX 75209

Notice of the filing of this application will also be published in the *Official Gazette*.

Given that the basic filing fee was submitted with the April 9, 2002 petition, the application is now complete and is being returned to the Office of Initial Patent Examination for further processing with respect to the declaration submitted on April 9, 2002. Thereafter, the application will be forwarded to the appropriate Technology Center for examination in due course.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.



RC Tang
Petitions Attorney
Office of Petitions

² Enclosed with petition.

³ The petition contains such statements by counsel's administrative staff.

⁴ **Counsel should verify that the \$110 check mailed on 10/17/02 has not cleared through the bank.**